IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

(SUO MOTU) CONTEMPT PETITION NO. 49 OF 1998

Bhagwati Prasad Trivedi.... Disputant

versus

ShivShakti Co-op Hsg.Sty & ors... Opponents

And

A.S.Parad and 4 others ..... Respondent.

Shri S.S.Kanetkar for the petitioner -appointed as amicus curiae.
Shri S.G.Surana for Respondents 6.7.9 & 10.

CORAM; A.P. DESHPANDE, J.
DATED; 12TH APRIL, 2007

P.C.:

1. One Bhagwati Prasad Trivedi filed a dispute before the Co-operative Court vide case No. CC-IV/298 of 1991. In the said dispute an interim order was passed on 9th July 1991 restraining the office bearers of the society and others acting for them, from making/implementing and/or effecting any change in the records of opponent no.1 society, and thereby removing the name of the disputant from the membership of the opponent no.1 society. Similar direction also came to be issued under Order dated 1-4-1992. Making a grievance that the respondents have breached the said orders an application was moved for taking action of contempt against the respondents. The co-operative Court had thus proceeded under sub section (6) of

section 148-A of the C-operative Societies Act by making a report to the Co-operative Appellate Court. As the Co-operative Appellate Court had thought it expedient, it has forwarded the report to this court for taking Suo Motu action against the respondent for Contempt of Court.

2. Perusal of the order dated 24-10-1996 reveals that the office bearers of the society had added names of some members with a view to implement Consent Award passed in some other case. It is relevant to note that the Consent Award is dated 28-6-1991 i.e. prior to the issuance of direction by the Co-operative Court. The stand of the respondent before the Co-operative Court was that they have added the names of the members in the Consent Award, which was passed prior in point of time than the dismissal order passed. It was also contended that recording of the names of the members in the consent award was a bonafide mistake committed inadvertently, and the same was not intended to commit breach of the order, or a wilful defines of the order. The respondent also tendered unconditional apology to the Co-operative Court but the co-operative court did not accept the same. The co-operative court has proceeded on an incorrect position of law, which is revealed from the observations made by the co-operative court which are reproduced hereinbelow.

> "As per this order the society is restrained from making, implementing or effecting any change in the record and as per the contentions in reply of the opponent society, the society in pursuance of the Consent Award recorded certain namesin the record under the guise of that Consent Award, but it is violation of that Court Order. Though it is bonafide mistake occurred inadvertently, but it is violation of the court order. The opponent tendered apology without admitting the allegations and there is violation of the Court order."

3. The Co-operative court thus proceeded on the footing that even if the mistake occurred inadvertently, the breach of court order would constitute contempt of court so as to mean a wilful disobedience of the order of the court. Unless and until disobedience is wilful, the same does not constitute contempt. Be as it may what is required to be noticed is that the main dispute itself has been disposed of as the parties have resolved the dispute in view of the settlement. Copy of the settlement is placed on record on page 127 of the record. The dispute has been resolved and disposed of in February 1998.

4. Both the learned counsel appearing for the respective parties categorically stated that the dispute is resolved pursuant to the terms of settlement. clause 12 of the settlement records a fact that the disputant does not press the above referred contempt notice bearing No.18 of 1996 against the Opponents/ respondents and accordingly the contempt notice has been disposed of. As I am convinced that no action whatsoever is warranted in view of the resolution of the dispute, the proceedings need to be dropped. I am also of the view that the Co-operative court should have accepted the unconditional apology tendered by the contemnors. Truly speaking the names of the members were incorporated in the records inadvertently. The same was admitted to be a bonafide mistake. If this be so it does not constitute contempt. Even otherwise, on resolution of the dispute there is absolutely no propriety in proceeding with the contempt petition. Hence Rule is discharged. Contempt proceedings are dropped with no order as to costs.

5. Here as well the learned counsel for the contemnors has tendered unconditional apology at the outset and I accept the same.

...